

No. 4616.

John M. Glenn, President of
Supervisors of City Charities,
inquiry as to the power of the
Visitors to the Jail to commit
insane prisoners to the
custody of the Supervisors

1906

JOHN M. GLENN, PRESIDENT.

MRS. JOHN J. ABEL.

JOHN BLACK.

HARRY T. MARSHALL.

ALFRED S. NILES.

ELISHA H. PERKINS.

HENRY STEFFENS.

CHAS. WEBER, JR.

JAMES R. WHEELER.

DEPARTMENT OF CHARITIES AND CORRECTION

SUB-DEPARTMENT,

SUPERVISORS OF CITY CHARITIES,

CITY HALL.

NATHANIEL G. GRASTY, SECRETARY.

#4616

BALTIMORE, April 25, 1906.

Hon. Wm. Cabell Bruce, City Solicitor,
Baltimore, Md.

Dear Sir -

Under Section 144 of the City Charter the Visitors to the City Jail have been releasing and sending to the care of this department insane prisoners without obtaining certificates of insanity from two physicians, or any order of court, as required by Act of 1900, Chapter 603, Sections 1 & 31.

Will you kindly give us your opinion as to whether this method of procedure is legal? It is important that we should have full legal authority for detaining insane patients.

Very truly yours,

John M. Glenn
President.

COPY

Baltimore City Jail,

Baltimore, Jan. 13th, 1905.

Lamar Hollyday, Esq., Sup't,

To Bay View Asylum,

Whereas, Joseph Hallburton was committed on the 16th day of Nov. A. D. 1904, to the Baltimore City Jail on the charge of Larceny and is affected with insanity, a form of disease that in the judgment of the physician of said jail, the accommodations for the comfort and nursing cannot be furnished by said Jail, and said Joseph Hallburton being without a home, you are hereby commanded to receive from any officer of said Jail the body of said Joseph Hallburton and safe keep until the 17th day of September, 1905 or until discharged by due course of law.

If cured, or in condition to be safely returned before the latter date the said Joseph Hallburton must be sent back to the Jail.

(Signed) Charles A. Hook.

Warden of Baltimore City Jail.

Geo. L. Wilkins, M.D.

Physician to Baltimore City
Jail

Section 144 of the City Charter is printed on the back of the certificate.

4616

May 2, 1906.

Edgar Allan Poe, Esq.,
Deputy City Solicitor.

Dear Sir:-

On April 26, Mr. Bruce referred to me Mr. Glenn's letter of April 25, with reference to the removal of insane prisoners from the City Jail to the asylum, and I herewith send you my report.

The question is, have the Visitors to the City Jail power to release prisoners who become insane while in the Jail, and send them to the Supervisors of City Charities without obtaining certificates of insanity from two physicians or any order of court?

Code 1904, Article 16, Sections 107 to 116, confers jurisdiction upon courts of equity over the persons and estates of lunatics. Section 115 authorizes the equity court to confine a lunatic upon the application of his trustee. This section, therefore, does not apply to the present case.

Code 1904, Article 27, Section 599, authorizes the Board of Directors of the Penitentiary to require the State Lunacy Commission to pass upon the sanity of convicts, and if such convicts are adjudged insane by said Commission, then the Criminal Court is given power to authorize their removal to an insane asylum. This section applies to the Penitentiary, and not to the City Jail, and, moreover, an order of court is here required.

Code 1904, Article 59, Sections 1, 3 and 31, provides that, when any person is alleged to be insane, and without sufficient means to pay for his maintenance, and who has no relatives legally chargeable with his

support, the Supervisors of City Charities shall, upon the written certificates of two physicians, cause such person to be sent to the almshouse or hospital, with the right, however, to a jury trial. This is the provision under which pauper lunatics are confined.

Code 1904, Article 59, Sections 4 to 9, provides for the determination of the sanity of any person who alleges insanity as a defense to crime, and for his commitment if found insane, but these sections do not apply to the present inquiry.

Code 1904, Article 59, Sections 12 &c., provides for the appointment of a State Lunacy Commission. Section 22 authorizes this Commission to act when "there is reason to believe that any person is wrongfully deprived of his liberty". Section 31 provides that "no person shall be committed to or confined as a patient in any institution, public, corporate or private, or almshouse or other place for the care or custody of the insane or idiots, except upon the written certificates of two qualified physicians", &c. It is expressly stated that this section does not apply to persons who are about to become insane, and who voluntarily consent to their own commitment. Such persons may be committed upon their voluntary application under Section 37. Section 36 provides that "the detention of any person in any of the said places or receptacles for the insane without compliance with these regulations shall be a misdemeanor", &c.

City Charter, Section 144, provides that "in case of any person who may be insane at the time of commitment to Jail, or become insane during the term for which committed, the said Visitors to the Jail shall have the power to release and send such person to his or her home, or to some infirmary, hospital, or to the almshouse, where provision has been made by the City of Baltimore for the reception of such cases". By

this section, authority is thus conferred upon the Visitors to the Jail to send persons who have become insane for their commitment to the almshouse. This section does not prescribe how this question of sanity shall be determined, but I understand from Mr. Glenn that in practice the Visitors to the Jail determine it themselves, without obtaining either the certificates of two physicians or any order of court.

I am of opinion that this practice is not legal. No man can be deprived of his life, liberty or property without due process of law. This means that no man can be deprived of his liberty and confined in an insane asylum without judicial proceedings of some kind being first had.

In Devilbliss vs. Bennett, 70 Md., 554, and in Hadaway vs. Smith, 71 Md., 319, the commitment by the courts of persons alleging insanity as a defense to crime is upheld, but the statutes applicable to this case provide for a jury trial and an order of court.

In Mayor and City Council vs. Keeley Institute, 81 Md., 106, Article 59, Sections 1, &c., providing for the commitment of pauper lunatics is upheld, but these statutes also provide for a jury trial. In the same case, Article 16, Section 47, providing for the commitment of drunkards on their voluntary application is upheld; but in Tome vs. Stump, 89 Md., 264, 269, it is said that lunatics "for obvious reasons not necessary to be stated are not permitted to dispense with legal proceedings to establish ^{their} lunacy as habitual drunkards are by Section 47 of Article 16 allowed to do to establish the proof of habitual drunkenness".

In Hamilton vs. Traber, 78 Md., 26, it is decided that a court of equity has no power to decree a sale of a lunatic's property until his lunacy has been first established by the inquisition of a jury. See also Willis vs. Hodson, 79 Md., 327.

Authorities, however, can scarcely be needed upon this proposi-

E.A.P. #4

tion, and I am clearly of opinion that, before a person can be legally removed to the asylum and there confined, under Section 144 of the Charter, his insanity must be determined by due process of law. There seems to be no provision specifically providing for the determination of the sanity of prisoners confined to the City Jail. I have some doubt about the application of Article 59, Section 1, to these cases, but, inasmuch as I find no other section which could be said to apply to them, and inasmuch as the application of this section would not involve a very ^{strained} ~~strange~~ construction of it, I am of opinion that this section can be availed of, and I, therefore, think that prisoners should not be removed from the City Jail to any asylum except upon the certificates of two qualified physicians given under Sections 1 and 31 of Article 59 of the Code.

Very truly yours,

Assistant City Solicitor.

ACR/IML

4616

May 5, 1906.

John M. Glenn, Esq.,
President, Supervisors of City Charities.

Dear Sir:-

I herewith enclose a report from Mr. Albert C. Ritchie, Assistant City Solicitor, in reply to your inquiry of April 25, relative to the power of the Visitors to the City Jail to release prisoners who become insane while in Jail, and to send them to the Supervisors of City Charities without obtaining certificates of insanity from two physicians or any order of court.

Very truly yours,

Enclosure.
EAP/IML

Deputy City Solicitor.

JOHN M. GLENN, PRESIDENT.
MRS. JOHN J. ABEL,
JOHN BLACK,
HARRY T. MARSHALL,
ALFRED S. NILES,
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SUB-DEPARTMENT,
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CITY HALL.

NATHANIEL G. GRASTY, SECRETARY.

4616

BALTIMORE, June 4, 1906.

Hon. Wm. Cabell Bruce, City Solicitor,

Baltimore, Md.

Dear Sir -

I beg to enclose a list of patients now at the City Hospital for the Insane, Bayview, which were sent there from the City Jail. The list gives also the dates of their admissions and the dates when their sentences to the Jail expired. You will note that all of the sentences have expired. In none of these cases were the certificates of two physicians secured. A certificate was received for each signed by Dr. Wilkins, the jail physician. I enclose a copy of the form of this certificate.

The question arises whether or not we shall let these people stay at Bayview without getting certificates or whether certificates must now be obtained. No question has been raised in any of these cases as to the insanity of the patient. They have been under the observation of our doctors long enough to make us feel sure of their insanity.

Another question is whether or not a certificate in regular form signed by the physician of the Jail will meet the requirements of our law. If so, it will save the city the expense of employing an outside physician in future cases.

If the cases on the enclosed list must have certificates, should these certificates be paid for by the Jail Board or by the Supervisors of City Charities? The cost is \$3.00 for each certificate, making \$6.00 in each case.

Very truly yours,

John M. Glenn
President.

Enc. 2

List of Patients in Insane Department, Bay View Asylum, received from
the Balto. City Jail.

W = White; B. = Black; M = Male; F = Female

Date of Admission.	Name.	^{Sentence} Time Expired.
Jan. 23rd. 1900.	Joseph J. Mason	B.M. 1/2 No time given.
Feb. 3rd. 1900.	Mary Flaherty	W.F. 1/2 " " "
Nov. 28th. 1900.	Alverda Hall	B.F. Dec. 3rd. 1900.
Dec. 22nd. 1900.	Louisa Rhode	W.F. Jan. 14th. 1901.
Feb. 21st. 1903.	George S. Brooks	B.M. June 19th. 1903.
July 28th. 1903.	Samuel T. Hines	B.M. Aug. 26th. 1903.
Oct. 6th. 1903.	Annie Griffin	B.F. No time given.
Feb. 1st. 1904.	Susan James #1	B.F. Feb. 25th. 1904.
Feb. 15th. 1904.	George A. Shorter	B.M. Mar. 14th. 1904.
June 4th. 1904.	Mary E. Smothers	B.F. July 3rd. 1904.
Dec. 6th. 1904.	John C. Nolan	B.M. Jan. 12th. 1905.
Jan. 27th. 1905.	Henry Watson	B.M. Feb. 2nd. 1905.
Feb. 22nd. 1905.	Annie Lee	B.F. Mar. 7th. 1905.
May 23rd. 1905.	Sarah Anderson	B.F. June 15th. 1905.
July 1st. 1905.	William Koutz	W.M. Aug. 21st. 1905.
Oct. 20th. 1905.	Alvin Crocket	B.M. Nov. 18th. 1905.
Mar. 30th. 1906.	John O'Brien	W.M. May 27th. 1906.
Apr. 12th. 1906.	Mildred Burrell	B.F. May 3rd. 1906.

4616

June 6, 1906.

Hon. W. Cabell Bruce,
City Solicitor,
Baltimore, Md.,

Dear Sir;---

As requested by your favor of June 5th, I have considered the matters referred to in Mr. Glenn's letter of June 4th, together with enclosures.

On May 2, 1906, during your absence in Virginia, I reported to Deputy City Solicitor Poe that in my opinion the visitors of the City Jail had no power to remove prisoners from the Jail to an insane asylum except upon the certificates of two physicians, given under Sections 1 and 31 of Article 59 of the Code of 1904. This report is contained in Office File No. 4616, and as it involves a matter of considerable importance I will be glad if you will read it.

It is doubtless as a result of this opinion that Mr. Glenn submits his questions of June 4th.

I understand that all of the patients on Mr. Glenn's list were transferred from the Jail to Bayview without the certificates of two physicians, and that the sentences of all of them have now expired. The first question is, should certificates from two physicians be obtained now? Since, in my opinion, the transfer from the Jail to Bayview of these prisoners without such certificate was not legal, I do not see that any authority for the detention of these patients exists and I, therefore, think that the certificates from two physicians should now be

obtained.

I see no objection to obtaining a certificate from the regular jail physician, as suggested by Mr. Glenn, and thus saving expense. One physician, however, is not enough, as in my opinion there must be two, but I see no reason why the jail physician should not be one of them.

In the present cases the certificates should, I think, be paid for by the Supervisors of City Charities. I see no reason why the Jail Board should pay these costs, especially in view of the fact that the sentences of all the patients have expired.

Very truly yours,

ACR/MHB.

Assistant City Solicitor.

4616

June 9, 1906.

John M. Glenn, Esq.,
President of Supervisors
of City Charities.

Dear Sir,-I reply to your letter of the 4th inst. Since in my opinion, already expressed in a former letter to you, the transfer from the Jail to Bay View Asylum of the prisoners mentioned by you without certificates was not legal, I do not see that any authority for the detention of these patients exists, and I therefore think that the certificates of two physicians should now be obtained.

I see no objection to obtaining a certificate from the regular Jail Physician, as suggested by you, and thus saving expense, provided he is a qualified physician within the meaning of Section 31 of Article 59 of the Code of Public General Laws of Maryland, Poe's recent revision. One physician, however, is not enough and in my opinion there must be two, but I see no reason why the Jail Physician, provided he be qualified as above mentioned, should not be one of them.

In the present cases the certificates should, I think, be paid for by the Supervisors of City Charities. There is no reason in my judgment why the Jail Board should pay these costs, especially in view of the fact that the sentences of all the patients have expired.

Truly yours,

WCB/HWW.

City Solicitor.

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NATHANIEL G. GRASTY, SECRETARY.

4616

BALTIMORE, May 7, 1906.

Edgar Allan Poe, Esq.,

Deputy City Solicitor, City.

Dear Sir -

I beg to acknowledge your favor of May 5th enclosing Mr.
Ritchie's clear and convincing opinion. Please accept my thanks.

Very truly yours,

John M. Glenn
President.

W. Cabell Bruce,
CITY SOLICITOR.

Edgar Allan Poe,
DEPUTY CITY SOLICITOR.

Joseph S. Goldsmith,

Albert C. Ritchie,

Sylvan Hayes Lauchheimer,
ASSISTANT CITY SOLICITORS.

Henry W. Weeks,
CLERK.

Department of Law,

Court House.

4616

Baltimore, Md., April 26, 1906.

Albert C. Ritchie, Esq.,
Assistant City Solicitor.

Dear Sir:-

Please find enclosed a letter, dated the 25th inst., from the President of the Supervisors of City Charities, asking me whether the Visitors to the City Jail can send to the care of the Supervisors of City Charities insane prisoners without obtaining certificates of insanity, &c.

Please examine this question, and let me have your report with reference thereto.

Truly yours,

W. Cabell Bruce
City Solicitor.

Enclosure.

WCB/IML

W. Cabell Bruce,
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Edgar Allan Poe,
DEPUTY CITY SOLICITOR.
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Sylvan Hayes Kauchheimer,
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Henry M. Weeks,
CLERK.

Department of Law,
Court House.

Baltimore, Md. June 5, 1906.

Albert C. Ritchie, Esq.,
Assistant City Solicitor.

Dear Sir:-

Please find enclosed a letter, dated the 4th inst., from the President of the Supervisors of city Charities, asking me whether certain formalities should be pursued in the case of patients at the City Hospital for the Insane, at Bayview, &c.

Please investigate the questions involved in the correspondence, and let me have your conclusions with reference thereto.

Truly yours,

W. Cabell Bruce
City Solicitor.

Enclosure.

WCB/IML

April 26, 1906.

Albert C. Ritchie, Esq.,
Assistant City Solicitor.

Dear Sir:-

Please find enclosed a letter, dated the 25th inst., from the President of the Supervisors of City Charities, asking me whether the Visitors to the City Jail can send to the care of the Supervisors of City Charities insane prisoners without obtaining certificates of insanity, &c. Please examine this question, and let me have your report with reference thereto.

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WCB/IML

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CITY HALL.

NATHANIEL G. GRASTY, SECRETARY.

4616

June 13, 1906.

BALTIMORE.

Hon. Wm. Cabell Bruce, City Solicitor,

Baltimore, Md.

Dear Sir -

I beg to acknowledge your favor of June 9th in the matter of the insane at Bayview, and thank you for your advice.

Yours truly,

John M. Glenn,
President.

W. Cabell Bruce,
CITY SOLICITOR.
Edgar Allan Poe,
DEPUTY CITY SOLICITOR.
Joseph S. Goldsmith,
Albert C. Ritchie,
Sylvan Hayes Lauchheimer,
ASSISTANT CITY SOLICITORS.

Henry M. Weeks,
CLERK.

Department of Law,
Court House.

Baltimore, Md. June 6, 1906.

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City Solicitor,
Baltimore, Md.,

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Albert C. Ritchie

Assistant City Solicitor.

ACR/MBB.